

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, et al.,

Plaintiffs,

-against-

ROYAL DUTCH PETROLEUM COMPANY and :
SHELL TRANSPORT AND TRADING
COMPANY,

Defendants.

X

KEN WIWA, et al.,

Plaintiffs,

-against-

BRIAN ANDERSON,

Defendant.

X

PITMAN, United States Magistrate Judge:

By notice of motion filed December 23, 2003 (Docket Item 95 in 96 Civ. 8386), plaintiffs move to strike defendants' reply brief filed in connection with a motion to dismiss or in the alternative for leave to file a surreply brief. For the reasons set forth below, the motion is denied in all respects.

Plaintiffs motion arises out of the fact that defendants improperly raised a number of new issues for the first time in their reply. See generally Riverkeeper, Inc. v. Collins, 359

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F.3d 156, 166 n.11 (2d Cir. 2004); Evangelista v. Ashcroft, 359 F.3d 145, 155 n.4 (2d Cir. 2004); Knipe v. Skinner, 999 F.2d 708, 710-11 (2d Cir. 1993); A & E Prods. Group, L.P. v. Mainetti USA, Inc., 01 Civ. 10820 (RPP), 2004 WL 169741 at *6 (S.D.N.Y. Jan. 27, 2004); Morris v. Dapolito, 297 F. Supp.2d 680, 689 n.7 (S.D.N.Y. 2004). I have today issued a report and recommendation disposing of the motion to dismiss. As noted in footnote 3 at page 19 of the report and recommendation, I did not consider the new matter raised by defendants for the first time in reply that was not properly responsive to the plaintiffs' opposition papers.

Since I have not considered new matter improperly raised by defendants for the first time in reply, there is no need to strike defendants' reply papers or to permit plaintiffs to file surreply papers. Accordingly, plaintiffs' motion is denied in all respects.

Dated: New York, New York
March 31, 2006

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

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